

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the hearing, but such requests should be made at the time of the hearing request described in § 30.310(b). Scheduling is at the sole discretion of the FAB reviewer, and is not reviewable. Once the hearing is scheduled and appropriate written notice has been mailed, the hearing cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet the test of paragraph (b) of this section and cannot be accommodated on the docket, no further opportunity for a hearing will be provided. Instead, the claimant's specified objections will be considered by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

§ 30.316 How does the FAB issue a final decision on a claim?

(a) If the 60-day period specified in the notice accompanying the recommended decision (plus any extension of such period granted by the FAB) for filing objections to the recommended decision expires and no objections have been filed, or if the claimant waives any objections to all or part of the recommended decision, the FAB will issue a decision affirming the recommended decision, either in whole or in part (see §§ 30.311, 30.312 and 30.314(a)).

(b) If the claimant files objections to all or part of the recommended decision, the FAB reviewer will issue a decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB receives the record from the district office shall be considered affirmed by the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the expiration of 30 days from the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the decision of the FAB will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

§ 30.317 Can the FAB request a further response from the claimant or remand a claim to the district office?

At any time before the issuance of its decision, the FAB may request that the claimant submit additional evidence or argument, or remand the claim to the district office for further development without issuing a decision, whether or not requested to do so by the claimant.

§ 30.318 Can the FAB review a determination by HHS with respect to an employee's dose reconstruction?

(a) The FAB will review the factual determinations upon which HHS based its decision. Factual findings that do not appear to be supported by substantial evidence will be remanded to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS, is binding on the FAB.

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The FAB reviewer may determine, however, that arguments concerning the application of that methodology should be considered by HHS and may remand the case to the district office for referral to HHS for such consideration.

§ 30.319 May a claimant request reconsideration of a decision of the FAB?

(a) A claimant may request reconsideration of a decision of the FAB by making a written request to the FAB within 30 days from the date of issuance of such decision.

(b) If the FAB grants the request for reconsideration, it will review the district office's recommended decision again and issue a new decision on the claim. A hearing is not available as part of the reconsideration process. If the FAB denies the request for reconsideration, the decision in question shall be final on the date the request is denied.

(c) A claimant may not seek judicial review of a decision on his or her claim under the Act until all administrative review opportunities have been exhausted and OWCP's decision on the claim is final pursuant to § 30.316(d).

MODIFICATION

§ 30.320 Can a final decision be modified once the period for requesting reconsideration has expired?

A final decision issued by the FAB may be modified at any time on OWCP's own motion. A final decision may also be modified on the motion of the claimant within one year of the date on which such decision became final, provided that the claimant can establish a mistake of fact in the decision, or changed conditions. Modification may be granted without regard to whether new evidence or information is presented or obtained. If OWCP determines that modification is warranted, it may issue a new recommended decision modifying the prior final decision.

(a) The decision whether or not to modify a final decision under this section is solely within the discretion of OWCP.

(b) Where OWCP grants modification of a final decision, any resulting recommended decision is subject to the adjudicatory process described in this

subpart. However, the scope of review at the FAB will be limited to review of the merits of the recommended decision. OWCP's discretionary determination to modify the prior final decision is not reviewable.

(c) Nothing in this section shall prevent a claimant from filing another claim under the EEOICPA for compensation for an occupational illness or a consequential injury for which he or she has not previously sought compensation under the EEOICPA. In any event, however, no claimant may receive more than one award of monetary compensation under sections 3628(a)(1) or 3630(a) of the EEOICPA.

Subpart E—Medical and Related Benefits

MEDICAL TREATMENT AND RELATED ISSUES

§ 30.400 What are the basic rules for obtaining medical care?

(a) The covered employee who fits into at least one of the compensable claim categories is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness, retroactive to the date the employee filed a claim for benefits under the EEOICPA (see § 30.100(c)). The employee need not be disabled to receive such treatment, and OWCP will pay for such treatment even if the covered employee dies before the claim is accepted. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.